

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAMES LEWIS ATKINS, JR.,

Plaintiff,

vs.

DR. JOHN DOE #1, *et al.*,

Defendants.

Case No. 2:09-cv-2054-JCM-LRL

ORDER

Plaintiff, who is an inmate proceeding *pro se*, has submitted an Application to Proceed *in Forma Pauperis* and a Civil Rights Complaint Pursuant to 42 U.S.C. § 1983. (#1). Based on the financial information provided, the court finds that plaintiff shall not be required to pay an initial partial filing fee. However, even if this action is dismissed, the full filing fee of \$350 must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

Plaintiff has also filed several other motions including a Motion for Equal Protection (#3). Plaintiff requests that the Court “afford him equal protection and appoint counsel” under Title II of the Americans with Disabilities Act. Plaintiff states that he requires counsel because he has limited education and physical disabilities that make him unable to adequately present his claims and complex legal issues.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. *Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 109 S.Ct. 1814 (1989). In certain exceptional circumstances, the Court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 1015 (9th Cir. 1990); *Wood v. Housewright*, 900 F.2d 1332 (9th Cir. 1990). Without a

1 reasonable method of securing and compensating counsel, this Court will seek volunteer counsel only
2 in the most serious and exceptional cases.

3 In the present case, the Court does not find the required exceptional circumstances. Even if it
4 is assumed that Plaintiff is not well versed in the law and that he has made serious allegations which,
5 if proved, would entitle him to relief, his case is not exceptional. The Court is faced with similar cases
6 almost daily. Therefore, Plaintiff's request for the appointment of counsel is denied.

7 **IT IS THEREFORE ORDERED** that Plaintiff's Application to Proceed *in Forma Pauperis*
8 (#1) is **GRANTED**. Plaintiff shall not be required to pay an initial partial filing fee. However, even if
9 this action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

10 **IT IS FURTHER ORDERED** that the movant herein is permitted to maintain this action to
11 conclusion without the necessity of prepayment of any additional fees or costs or the giving of security
12 therefor. This order granting *forma pauperis* status shall not extend to the issuance of subpoenas at
13 government expense.

14 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department
15 of Corrections shall pay to the clerk of the United States District Court, District of Nevada, 20% of the
16 preceding month's deposits to plaintiff's account (inmate #1031289), in the months that the account
17 exceeds \$10.00, until the full \$350 filing fee has been paid for this action. The clerk of the court shall
18 send a copy of this order to the finance division of the clerk's office. The clerk shall also send a copy
19 of this order to the attention of the Chief of Inmate Services for the Nevada Department of Corrections,
20 P.O. Box 7011, Carson City, NV 89702.

21 **IT IS FURTHER ORDERED** that Plaintiff's Motion requesting permission to file a longer than
22 normal complaint (#2) is **GRANTED**.

23 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Equal Protection (#3) requesting the
24 appointment of counsel is **DENIED**.

1 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Court Order to Produce Documents
2 (#4) is **DENIED** as premature.

3 **IT IS FURTHER ORDERED** that this case will be screened as required pursuant to 28 U.S.C.
4 § 1915A as soon as the Court's schedule permits and in the order that it was received. The Clerk of the
5 Court shall retain the complaint at this time.

6 DATED: 5-18-10

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UNITED STATES MAGISTRATE JUDGE